

STATE OF NEBRASKA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Change)
of Ownership for Water) ORDER
Appropriation A-11405.)
Water Division 1-D.)

This matter came on for consideration pursuant to Neb. Rev. Stat. § 46-230(2) (Reissue 2004), before the Director of the Department of Natural Resources (Department). The Director FINDS:

1. On October 21, 2002, Marjorie J. Varah filed a Notice of Change of Ownership in the Department indicating that James Varah and the Leonard and Marjorie Varah Joint Revocable Trust are the owners of a portion of the lands under water appropriation A-11405 located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 26, Township 9 North, Range 9 West of the 6th P.M. in Hall County.
2. On January 10, 2003, Charles Harden filed a Notice of Change of Ownership in the Department indicating that he is the owner of a portion of the lands under water appropriation A-11405 located in the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 27, Township 9 North, Range 9 West of the 6th P.M. in Hall County.
3. Department records currently indicate that the land described below is covered by water appropriation A-11405 and that Carl Varah was the owner of the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 26, and Clayton W. and Luella Harden were the owners of the remainder of the lands under A-11405. Water appropriation A-11405, with a priority date of April 23, 1968, is a permit to divert 0.98 cubic foot per second (cfs) of water at a rate of one-seventieth (1/70) of a cfs per acre of land irrigated from a tributary to the North Branch of the West Fork of the Big Blue River from points on the left bank in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 26 and on the right bank of said stream in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, both in Township 9 North, Range 9 West of the 6th P.M. in Hall County for irrigation of the following described lands:

Township 9 North, Range 9 West		
<u>Hall County</u>		<u>Acres</u>
Section 26:	NW $\frac{1}{4}$ NW $\frac{1}{4}$	12
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	12
Section 27:	SW $\frac{1}{4}$ NE $\frac{1}{4}$	20
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>25</u>
TOTAL		69

4. Following a general consultation conducted under the provisions of Neb. Rev. Stat. § 37-807 (Reissue 2004), the Nebraska Game and Parks Commission has determined that Notice of Change of Ownership filings pose no potential impacts to threatened and endangered species or their habitat and require no further consultation.
5. All landowners have access to one of the approved points of diversion from their properties. Therefore, no agreements are needed to allow access to an approved point of diversion.

It is CONCLUDED:

1. The Department must update its records in accordance with Neb. Rev. Stat. § 46-230(2) (Reissue 2004).
2. The water right attaches to the land and is limited by the amount of acres irrigated.
3. It is in the best interest of the owners and the State to divide the water appropriation between the owners so that each owner's rights are distinguishable. However, all rights should remain the same priority as to one another.
4. This change of ownership poses no potential impact to threatened and endangered species or their habitat.
5. This change of ownership poses no point of diversion access issues.

It is therefore ORDERED that water appropriation A-11405 shall be shown in the Department's records as follows:

1. Water appropriation A-11405A, with a priority date of April 23, 1968, shall be shown in the name of James Varah and the Leonard and Marjorie Varah Joint Revocable Trust. Water appropriation A-11405A shall be for the right to divert 0.34 cfs (153 gallons per minute) of water from a tributary to the North Branch of the West Fork of the Big Blue River at a rate of one-seventieth (1/70) of a cfs for each acre irrigated from points of diversion on the left bank of said stream in the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 26, Township 9 North, Range 9 West of the 6th P.M. in Hall County for irrigation of the following described lands as shown on map number 16813. Map number 16813 represents the general location of the lands described below, based upon aerial photography and information located within the Department.

Township 9 North, Range 9 West	
Hall County	Acres
Section 26: NW $\frac{1}{4}$ NW $\frac{1}{4}$	12
NE $\frac{1}{4}$ NW $\frac{1}{4}$	<u>12</u>
TOTAL	24

2. Water appropriation A-11405B, with a priority date of April 23, 1968, shall be shown in the name of Charles Harden and shall be for the right to divert 0.64 cfs (287 gallons per minute) of water from a tributary to the North Branch of the West Fork of the Big Blue River at a rate of one-seventieth (1/70) of a cfs for each acre irrigated from a point of diversion on the right bank of said stream in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 27, Township 9 North, Range 9 West of the 6th P.M. in Hall County for irrigation of the following described lands as shown on map number 16813. Map number 16813 represents the general location of the lands described below, based upon aerial photography and information located within the Department.

Township 9 North, Range 9 West		
Hall County		Acres
Section 27:	SW $\frac{1}{4}$ NE $\frac{1}{4}$	20
	SE $\frac{1}{4}$ NE $\frac{1}{4}$	<u>25</u>
TOTAL		45

3. All other rights remain the same.
4. Notice is hereby given to James Varah and the Leonard and Marjorie Varah Joint Revocable Trust and Charles Harden or any subsequent landowner that failure to use water appropriation A-11405 for five consecutive years may make them subject to cancellation under the provisions of Neb. Rev. Stat. §§ 46-229 to 46-229.06 (Reissue 2004).

DEPARTMENT OF NATURAL RESOURCES

September 29, 2006

Ann Bleed, Acting Director

A copy of this Order and map number 16813 were mailed on September , 2006, to Leonard and Marjorie Varah, N. 2575 Homestead Road, Fort Atkinson, Wisconsin 53538; to Charles Harden, Box 312, Algonac, Michigan 48001; and were provided to the Department's field office in Lincoln, Nebraska.